

Fred W. Alvarez, State Bar No. 068115  
 WILSON SONSINI GOODRICH & ROSATI  
 650 Page Mill Road  
 Palo Alto, CA 94304-1050  
 Telephone: (650) 493-9300  
 Facsimile: (650) 493-6811

Court-Appointed Monitor

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDUARDO GONZALEZ, ANTHONY )  
 OCAMPO, ENCARNACION GUTIERREZ, )  
 JOHAN MONTOYA, JUANCARLOS GÓMEZ- )  
 MONTEJANO, JENNIFER LU, AUSTIN CHU, )  
 IVY NGUYEN, ANGELINE WU, ERIC FIGHT, )  
 CARLA GRUBB, DAVID CULPEPPER, )  
 PATRICE DOUGLASS, and ROBAIR )  
 SHERROD, BRANDY HAWK and ANDRE )  
 STEELE, on behalf of themselves and all others, )

Plaintiffs,

v.

ABERCROMBIE & FITCH STORES, INC., )  
 A&F CALIFORNIA, LLC, A&F OHIO, INC., )  
 and ABERCROMBIE & FITCH )  
 MANAGEMENT CO., )

Defendants.

ELIZABETH WEST and JENNIFER LU,

Plaintiffs,

v.

ABERCROMBIE & FITCH STORES, INC., )  
 A&F CALIFORNIA, LLC, A&F OHIO, INC., )  
 and ABERCROMBIE & FITCH )  
 MANAGEMENT CO., )

Defendants.

EQUAL EMPLOYMENT OPPORTUNITY )  
 COMMISSION, )

v.

ABERCROMBIE & FITCH STORES, INC., )  
 A&F CALIFORNIA, LLC, A&F OHIO, INC., )  
 and ABERCROMBIE & FITCH )  
 MANAGEMENT CO., )

Defendants.

CASE NOS.: 03-2817 SI, 04-4730 and  
 04-4731

**EXECUTIVE SUMMARY OF  
 COURT-APPOINTED MONITOR'S  
 SECOND ANNUAL COMPLIANCE  
 REPORT**

EXECUTIVE SUMMARY OF COURT-  
 APPOINTED MONITOR'S SECOND  
 ANNUAL COMPLIANCE REPORT

**I. REQUIREMENTS OF CONSENT DECREE**

The Consent Decree provides for the preparation of an Executive Summary of the Court-Appointed Monitor's Annual Compliance Report. The Executive Summary should set forth "the substance of the Monitor's findings" with respect to Abercrombie's<sup>1</sup> compliance with the requirements of the Consent Decree for the applicable period. The Consent Decree goes on to describe the Executive Summary as follows: "The parties contemplate that the Executive Summary will reflect the Monitor's general findings in areas such as, but not limited to, training, recruitment, . . . and attainment of Benchmarks, all as more specifically covered by the Report, and the parties also contemplate that the Executive Summary will not include specific findings as to, inter alia, the numbers of applications, hires, promotions, or specific occurrences or events. By way of example, the Executive Summary's discussion of the Company's training could generally set out the Monitor's findings relative to whether the Company had or had not met its overall training objectives under the Decree over the subject reporting period, and, if not, a general statement of matters with respect to which there had been non-compliance and any steps the Company is to take to resolve such matters." What follows is the Monitor's Executive Summary of the Second Annual Compliance Report, with topics listed in the order presented in the Consent Decree. This Executive Summary does not discuss any of Abercrombie's obligations limited to the first year following the Approval Date of the Decree.

**II. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MARKETING**

The Consent Decree requires that Abercrombie's marketing materials "reflect diversity, as reflected by the major racial/ethnic minority populations of the United States." The Monitor found that Abercrombie's marketing materials during the Second Compliance Period,<sup>2</sup> taken as a

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<sup>1</sup> This Executive Summary incorporates herein by reference the definition of "Abercrombie" contained in the Consent Decree: "'Abercrombie' or the 'Company' means Abercrombie & Fitch Stores, Inc.; A&F California, LLC; A&F Ohio, Inc.; and Abercrombie & Fitch Management Co., as well as each of their parents, subsidiaries, affiliates, officers, directors, agents, management, successors and assigns and those in active concert or participation with them, or any of them. The terms of [the Consent] Decree cover all stores operated by Abercrombie whether under the name Abercrombie & Fitch, Hollister, abercrombie, or any other concept operated by Abercrombie."

<sup>2</sup> The Second Compliance Period extends from May 2006 to April 2007.

1 whole, did not reflect diversity. When the Monitor compared the apparent race/ethnicity of  
 2 individuals appearing in Abercrombie's marketing materials to the U.S. Census figures regarding  
 3 the major racial/ethnic minority populations of the United States, Abercrombie's marketing  
 4 materials were considerably less diverse. In particular, images of individuals whose apparent  
 5 race/ethnicity was Asian American or Latino were almost entirely absent from Abercrombie's  
 6 marketing materials.

7 To achieve compliance with this obligation, Abercrombie should strive to include African  
 8 American, Asian American, and Latino images in the full range of marketing materials so that  
 9 those materials, taken as a whole, reflect diversity.

### 10 **III. SUBSTANCE OF MONITOR'S FINDINGS REGARDING NOTICE AND** 11 **POSTING**

12 The Monitor found that Abercrombie generally achieved compliance with the Consent  
 13 Decree's requirements regarding the posting of Exhibit B Notices. In addition, Abercrombie  
 14 published the Exhibit B Notice every four (4) months in the HR 411 Bulletin, as required by the  
 15 Consent Decree.

### 16 **IV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING EEO AND DIVERSITY** 17 **TRAINING**

18 The majority of Abercrombie's Managers-in-Training, Assistant Managers, Store  
 19 Managers, and General Managers, as well as District Managers and Regional Managers, have  
 20 received EEO and Diversity Training. However, Abercrombie has not yet demonstrated whether  
 21 its District Managers, Regional Managers, and in-store managers were trained within the time  
 22 periods required by the Consent Decree. The great majority of Abercrombie's Home Office  
 23 Employees received EEO and Diversity Training within the time periods prescribed by the  
 24 Consent Decree. Abercrombie did not have any training obligations with respect to Human  
 25 Resources Associates in the Second Compliance Period. On a going-forward basis, Abercrombie  
 26 should ensure that it implements adequate systems to identify which employees are due for  
 27 training under the Consent Decree, and that those employees are timely trained.  
 28

**V. SUBSTANCE OF MONITOR'S FINDINGS REGARDING INTERNAL COMPLAINT PROCEDURE**

The Monitor found that, in general, Abercrombie complied with the Consent Decree's requirements that it (1) commence and resolve investigations in a timely manner; (2) interview relevant witnesses; (3) communicate the results of investigations to complainants; and (4) keep written records of the investigatory steps taken. The Monitor also found that Abercrombie continued to adequately publicize the Internal Complaint Procedure through the Exhibit B Notices and the Associate Handbooks.

**VI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITMENT AND HIRING**

In the First Annual Compliance Report, the Monitor reported that Abercrombie did not comply with the Consent Decree's requirements that "all involved staff" receive training in the Company's Recruitment and Hiring Protocol and that they do so within prescribed time periods. Abercrombie also did not achieve compliance with these requirements during the Second Compliance Period. Abercrombie must promptly train all involved staff, including all District Managers, General Managers, Store Managers, Assistant Managers, and Managers-in-Training, to be in compliance with the terms of the Consent Decree.

In the First Annual Compliance Report, the Monitor reported that Abercrombie's Recruitment and Hiring Protocol did not contain an affirmative requirement that Abercrombie seek qualified African American, Asian American, and Latino applicants of both genders, as required by the Consent Decree. Abercrombie has since revised the Protocol to comply with this portion of the Decree.

**VII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING MANAGERIAL PROMOTIONS**

Abercrombie promoted the targeted numbers of African American, Asian American, Latino, and female managers to most managerial positions. However, Abercrombie did not promote sufficient numbers of African American Assistant Managers to the Store

1 Manager/General Manager positions during the fourth six-month period. To comply with the  
2 requirements of the Consent Decree, Abercrombie must renew its efforts to promote African  
3 American managers “in a proportion that is no less than the specific group’s proportion of the  
4 available feeder pool.”

#### 5 **VIII. SUBSTANCE OF MONITOR’S FINDINGS REGARDING RECRUITERS**

6 The Monitor found that Abercrombie employed the agreed-upon number of Recruiters  
7 and that Abercrombie based an adequate number of those Recruiters in major metropolitan areas,  
8 as required by the Consent Decree. Abercrombie was also charged with using Best Efforts<sup>3</sup> to  
9 ensure that its Recruiters reflect diversity in race/national origin and gender. More than half of  
10 the Company’s Recruiters are female, and a significant percentage are African American.  
11 Abercrombie has also increased its percentage of Asian American Recruiters. However, the  
12 percentage of Latino and Asian American Recruiters remains too low to warrant a finding that  
13 the Recruiters generally reflect diversity with respect to race. The Monitor encourages  
14 Abercrombie to continue its efforts to increase the overall diversity of its Recruiters.

15 The Consent Decree requires that Abercrombie consider both external and internal  
16 candidates for the Recruiter position. Although the Recruiter job description no longer provides  
17 that a candidate must currently be employed by Abercrombie in a management-level position,  
18 the Company has not yet hired an external candidate. For the upcoming compliance period,  
19 Abercrombie should expand its external recruiting efforts when seeking additional Recruiters  
20 and/or filling vacant Recruiter positions. Alternatively, Abercrombie should seek modification  
21 of this requirement from Lead Counsel and the EEOC if the Company believes that the  
22 objectives of the Recruiter provision are being attained.

23 In compliance with the Consent Decree, Abercrombie revised the job description for the  
24 Recruiter position to include an affirmative directive that the Recruiters recruit African  
25 Americans, Asian Americans, and Latinos of both genders.

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26  
27 <sup>3</sup> This Executive Summary incorporates herein by reference the definition of “Best Efforts”  
28 contained in the Consent Decree: “‘Best Efforts’ means implementing and adequately funding a  
plan reasonably designed to comply with all the specific objectives to which the best efforts are  
directed.”

**IX. SUBSTANCE OF MONITOR'S FINDINGS REGARDING ADVERTISEMENTS**

The Monitor found that Abercrombie generally complied with the Consent Decree's requirement that the Company place advertisements for in-store employment opportunities in periodicals that targeted African Americans, Asian Americans, and/or Latinos of both genders. In the third six-month period, the majority of the advertisements did not advertise for in-store employment, as required by the Consent Decree. However, in the fourth six-month period, all of the advertisements expressly advertised for in-store opportunities.

**X. SUBSTANCE OF MONITOR'S FINDINGS REGARDING RECRUITING EVENTS**

The Monitor found that Abercrombie satisfied the requirement that the Company attend Minority<sup>4</sup> job fairs and recruiting events that are attended by African American, Asian American, and Latino individuals of both genders.

**XI. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DIVERSITY CONSULTANT**

The Monitor found that Abercrombie utilized a Diversity Consultant to conduct diversity and inclusion training and to aid in identifying sources of qualified Minority candidates, as required by the Consent Decree.

**XII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING DOCUMENTATION**

The Monitor found that Abercrombie complied with the Consent Decree's requirement that the Company provide documentation regarding the placement of advertisements for in-store opportunities and the Recruiters' attendance at job fairs and recruiting events targeted towards African Americans, Asian Americans, and Latinos.

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<sup>4</sup> This Executive Summary incorporates herein by reference the definition of "Minority" contained in the Consent Decree: "'Minority' means all African Americans, Asian Americans, and Latinos."

### **XIII. SUBSTANCE OF MONITOR'S FINDINGS REGARDING HIRING BENCHMARKS**

The Monitor found that Abercrombie complied with the requirements of the Consent Decree in terms of implementing and establishing Hiring Benchmark rates for the third and fourth six-month compliance periods.

However, Abercrombie did not meet most Company-wide Hiring Benchmarks set for the Second Compliance Period. Table 1, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Model position in the third and fourth six-month periods.

**Table 1**  
**Model - Achievement of Third and Fourth Period Benchmarks**

	<b>Third Period</b>	<b>Fourth Period</b>
<b>African American</b>	Missed	Missed
<b>Asian American</b>	Missed	Missed
<b>Latino</b>	Missed	Missed
<b>African American Female</b>	Missed	Missed
<b>Female</b>	Met	Met

Table 2, below, summarizes Abercrombie's performance with respect to the Benchmarks for the Manager-in-Training position in the third and fourth six-month periods.

**Table 2**  
**MIT - Achievement of Third and Fourth Period Benchmarks**

	<b>Third Period</b>	<b>Fourth Period</b>
<b>African American</b>	Met	Missed
<b>Asian American</b>	Missed	Met
<b>Latino</b>	Missed	Missed
<b>Female</b>	Met	Met

### **XIV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING REPORTING AND COMPLIANCE MEETINGS**

The Monitor found that Abercrombie complied with the reporting and compliance meeting requirements set forth in the Consent Decree. The Company timely provided all reports required under the terms of the Consent Decree and engaged in compliance meetings pursuant to the terms of the Consent Decree.

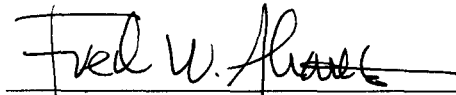
**XV. SUBSTANCE OF MONITOR'S FINDINGS REGARDING CONTENTS OF SEMI-ANNUAL PROGRESS REPORTS**

Abercrombie submitted Semi-Annual Progress Reports in a timely fashion, which it supplemented with additional materials. The Monitor found that the Semi-Annual Progress Reports generally included the materials and information required pursuant to the Consent Decree.

Dated: August 31, 2007

Fred W. Alvarez

By:



Fred W. Alvarez  
WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

Court-Appointed Monitor